

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: DENEEN WALTON & REGINA FEES

(Case No. 12240)

A hearing was held after due notice on December 17, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for variances from the front yard setback requirement for existing structures.

Findings of Fact

The Board found that the Applicants are seeking a variance of 31.3 feet from the 40 feet front setback requirement along Angola Road for an existing shed on a through lot, a variance of 1.9 feet from the 30 feet front yard setback requirement along Linden Drive for an existing dwelling, and a variance of 7.5 feet from the 30 feet front yard setback requirement along Linden Drive for an existing deck and steps. This application pertains to certain real property that is a through lot located on the northeast corner of the intersection of Sycamore Drive and Linden Drive in the Angola by the Bay subdivision (911 Address: 22871 Linden Drive, Lewes said property being identified as Sussex County Tax Map Parcel Number 2-34-11.16-41.00.

1. The Board was given copies of the Application, a survey of the Property dated July 5, 2018, pictures of the Property, a building permit application, a certificate of compliance, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of the Application or in opposition to the Application.
3. The Board found that Regina Fees and Deneen Walton were sworn in to testify about the Application. The Applicants submitted a letter in support of the Application to the Board to review.
4. The Board found that Ms. Fees testified that the exceptional practical difficulty was not created by the Applicants because she relied on the company who built the shed to obtain the permits. The contractor, Capital Structures, obtained the permits on their behalf.
5. The Board found that Ms. Fees testified that the homeowners association approved the shed.
6. The Board found that Ms. Fees testified that the house was built in 1987 and was later remodeled with no change to the footprint.
7. The Board found that Ms. Fees testified that the Applicants purchased the Property in 2016.
8. The Board found that Ms. Fees testified that the Property is unique because it is a double lot with roads on three sides of the lot. The Property is also located near the gates to Angola by the Bay and the house faces the intersection. The Applicants consider Angola Road to be the rear yard.
9. The Board found that Ms. Fees testified that other lots in the neighborhood have common area between their lots and Angola Road but this lot does not.
10. The Board found that Ms. Fees testified that there is a lot of foot traffic in the area.
11. The Board found that Ms. Fees testified that the shed is visible to them and deters theft; which is a problem in the area.
12. The Board found that Ms. Fees testified that the fence would have to be moved for the shed.

13. The Board found that Ms. Fees testified that the shed, which is modern and attractive, is used to store tools and outdoor furniture.
14. The Board found that Ms. Fees testified that the shed poses no traffic concerns.
15. The Board found that Ms. Fees testified that there are other sheds in the neighborhood.
16. The Board found that Ms. Fees testified that the Property could not be otherwise developed due to the three front yards.
17. The Board found that Ms. Fees testified that the variances do not alter the essential character of the neighborhood and are the minimum variances necessary to allow the structures to remain in the current locations.
18. The Board found that Ms. Fees testified that there is no other place to locate the shed.
19. The Board found that Ms. Walton testified that there have been no complaints from neighbors.
20. The Board found that Ms. Walton testified that there is about fifteen feet from the property line to the edge of pavement of Angola Road.
21. The Board found that one (1) person appeared in support of and no one appeared in opposition to the Application. Paul Reiger was sworn in and testified in support of the Application.
22. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board found credible, persuasive, and un rebutted, the Board determined that the application met the standards for granting a variance. The findings below further support the Board's decision to approve the Application.
 - a. The Property is unique as it is a corner, through lot with road frontage on three sides. Based on the testimony of the Applicants and a review of the tax map, the Property is the one of the only lots along Linden Drive which has frontage along Angola Road. Neighboring lots have a common area buffer between Angola Road. Since the Property is adjacent to three roads, the building envelope is quite limited. The Board also notes that the Property is located near the entrance of Angola by the Bay and is highly visible. As a result, the shed is needed to provide necessary storage. Ultimately, these conditions greatly limited the buildable area of the Property and have created an exceptional practical difficulty for the Applicants.
 - b. Due to the uniqueness of the Property, the Property cannot be developed in strict conformity with the Sussex County Zoning Code. The Applicants seek to retain an existing dwelling, shed, deck, and steps but are unable to do so without violating the Sussex County Zoning Code. The Board is convinced that the variances are necessary to enable the reasonable use of the Property as the variances will allow the Applicants to retain an existing dwelling, shed, deck, and steps on the Property. The Board is convinced that the shape and location of the structures are reasonable, which is confirmed when reviewing the survey provided by the Applicants. The Board notes that shed is needed to provide usable outdoor storage for their tools and belongings.
 - c. The exceptional practical difficulty was not created by the Applicants. The Property has unique physical conditions due to the Property's road frontage along three roads and its limited building envelope. It is clear that the Applicants did not create the unique physical conditions of the Property. These conditions have created the exceptional practical difficulty for the Applicants who seek to retain an existing dwelling, shed, deck, and steps. The Applicants also did not construct the dwelling or deck as those structures were placed on the Property by a prior owner. The Applicants also relied on a contractor to place the shed on the Property only to later

discover that the shed encroached into the setback area. The Board also notes that the dwelling was built by a prior owner.

- d. The variances will not alter the essential character of the neighborhood nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. The Board is convinced that the existing dwelling, shed, deck, and steps will have no effect on the character of the neighborhood. The dwelling, deck, and steps have been on the Property for many years without complaints noted in the record. No evidence was presented that the variances would somehow alter the essential character of the neighborhood. The Board also notes that the testimony and record demonstrate that there is a significant distance between the edge of paving of Angola Road and Linden Drive and the front property lines so the encroachments are likely not noticeable without a survey. Lastly, the Board notes that there are other sheds in the neighborhood.
- e. The variances sought are the minimum variances necessary to afford relief and the variances requested represent the least modifications possible of the regulations at issue. The Applicants have demonstrated that the variances sought will allow the Applicants to retain an existing dwelling, shed, deck, and steps on the Property. No additions or modifications to those structures are requested.

The Board granted the variance application finding that it met the standards for granting a variance.

Decision of the Board

Upon motion duly made and seconded, the variance application was approved. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. Bruce Mears, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the variance application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date March 5, 2019